

## **REMARKS**

Applicants have carefully reviewed the Final Office Action mailed on October 12, 2007. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment, claims 1 and 37 are amended. No new matter is added. Claims 1, 3, 7, 37, and 39-43 remain pending.

### **Claim Rejections Under 35 U.S.C. §102**

Claims 1, 3, and 37 are rejected under 35 U.S.C. §102(b) as being anticipated by Smith in U.S. Patent No. 6,235,026. Applicants respectfully traverse this rejection. Nonetheless, in the interest of furthering prosecution claims 1 and 37 are both amended to recite that the shaft has a distal end that is disposed at the distal end region of the sheath. Claim 1 also recites a swivel having a first end that is coupled to the distal end of the shaft. Claim 37 similarly recites a swivel coupled to the distal end of the shaft. From these claim limitations, it can be appreciated that the swivel, based on it being coupled to the distal end of the shaft, is positioned at the distal end of the sheath. This differs from the swivel tube 290 in Smith, which “may be interposed on the shaft 218 between the knob 232 and the proximal handle assembly”. Column 5, lines 62-66. The sheath 12 (see Figure 1 in combination with Figure 8) extends distally from the knob 232. Thus, the swivel tube 290 and sheath 12 of Smith are not arranged as required by claims 1 and 37. Based on this difference, Applicants respectfully submit that claims 1 and 37, as well as claim 3 depending from claim 1, are patentable over the cited art.

### **Claim Rejections Under 35 U.S.C. §103**

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Smith in view of Fleury Jr. in U.S. Patent No. 4,326,530. MPEP §2143 states that in order to establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested. As set forth above, Smith does not teach or suggest all the limitations of amended claim 1. Fleury Jr. fails to overcome this deficiency. Consequently, Applicants respectfully submit that amended claim 1 is patentable over the combination of Smith and Fleury Jr., to the extent that such a combination is even possible. Because claim 7 depends from claim 1, it is also patentable for the same reasons as claim 1 and because it adds significant elements to distinguish it further from the art.

Claims 39-41 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Smith in view of Swanson et al. in U.S. Patent Application Pub. No. US 2002/0151889. The Examiner indicated that Smith fails to disclose a loop comprising a plurality of branches that extend within the swivel body. However, the Examiner indicated that “Swanson teaches the use of a surgical snare comprising a snare loop having a plurality of proximal legs that each extend back to a handle in the same field of endeavor for the purpose of enhancing the operators ability to maneuver and snare obstructions” and that “[i]t would be obvious to one having ordinary skill in the art to combine the loop member comprising a plurality of proximal legs with the surgical snare device of Smith in order to provide a loop with enhanced maneuverability.” We respectfully disagree.

MPEP §2143 states that in order to establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested. Claim 39 recites that at least a portion of the legs (of the snare) is disposed within the second end of the swivel. As conceded by the Examiner, Smith does not teach or suggest this limitation. Swanson et al. only teach that legs 120 and 122 can be attached to sliding control knobs 124 and 126, not a swivel. Legs 182/184 in Figures 48-49 do not attach to a swivel either, or to anything in particular. Therefore, even when combined, the cited art fails to teach or suggest all the claim limitations.

Based on these remarks, Applicants respectfully submit that claim 39 is patentable over the cited art. Because claims 40-41 and 43 depend from claim 39, they are also patentable for the same reasons as claim 39 and because they add significant elements to distinguish them further from the art.

Claim 42 is rejected under 35 U.S.C. §103(a) as being unpatentable over Smith as applied to claims 39-41 and 43 above (presumably in combination with Swanson et al.), and further in view of Fleury Jr. For the reasons set forth above, Applicants respectfully submit that claim 39 is patentable over the combination of Smith and Swanson et al. Fleury Jr. fails to overcome this deficiency. Consequently, Applicants respectfully submit that amended claim 1 is patentable over the combination of Smith, Swanson et al., and Fleury Jr., to the extent that such a combination is even possible. Because claim 42 depends from claim 39, it is also patentable for the same reasons as claim 42 and because it adds significant elements to distinguish it further from the art.

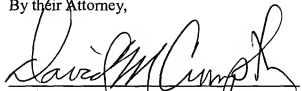
**Conclusion**

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

John A. Griego et al.

By their Attorney,

A handwritten signature in black ink, appearing to read "David M. Crompton", is written over a horizontal line.

Date: \_\_\_\_\_

12/12/07

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